

the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.1563-1(d)(3) with respect to such taxable year.

(Secs. 44B, 381, and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2834, 26 U.S.C. 44B); 91 Stat. 148, 26 U.S.C. 381(c)(26); 68A Stat. 917, 26 U.S.C. 7805)

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§ 1.52-2 Adjustments for acquisitions and dispositions.

(a) *General rule.* The provisions in this section only apply to the computation of the new jobs credit. If, after December 31, 1975, an employer acquires the major portion of a trade or business or the major portion of a separate unit of a trade or business, then, for purposes of computing the new jobs credit for any calendar year ending after the acquisition, both the amount of unemployment insurance wages and the amount of total wages considered to have been paid by the acquiring employer, for both the year in which the acquisition occurred and the preceding year, must be increased, respectively, by the amount of unemployment insurance wages and the amount of total wages paid by the predecessor employer that are attributable to the acquired portion of the trade or business or separate unit. If the predecessor employer informs the acquiring employer in writing of the amount of unemployment insurance wages and the amount of total wages attributable to the acquired portion of the trade or business that have been paid during the periods preceding the acquisition, then, for purposes of computing the credit for any calendar year ending after the acquisition the amount of unemployment insurance wages and the amount of total wages considered paid by the predecessor employer shall be decreased by those amounts. Regardless of whether the predecessor employer so informs the acquiring employer, the predecessor employer shall not be allowed a credit for the amount of any increase in the employment insurance

wages or the total wages in the calendar year of the acquisition attributable to the acquired portion of the trade or business over the amount of such wages in the calendar year preceding the acquisition.

(b) *Meaning of terms—(1) Acquisition.* (i) For the purposes of this section, the term “acquisition” includes a lease agreement if the effect of the lease is to transfer the major portion of the trade or business or of a separate unit of the trade or business for the period of the lease. For instance, if one company leases a factory (including equipment) to another company for a 2-year period, the employees are retained by the second company, and the factory is used for the same general purposes as before, then for purposes of this section the lessee has acquired the lessor’s trade or business for the period of the lease.

(ii) Neither the major portion of a trade or business nor the major portion of a separate unit of a trade or business is acquired merely by acquiring physical assets. The acquisition must transfer a viable trade or business.

(iii) Subdivision (ii) of this subparagraph may be illustrated by the following examples:

Example 1. R Co., a restaurant, sells its building and all its restaurant equipment to S Co. and moves into a larger, more modern building across the street. R Co. purchases new equipment, retains its name and continues to operate as a restaurant. S Co. opens a new restaurant in the old R Co. building. S Co. has merely acquired the old R Co. assets; it has not acquired any portion of R Co.’s business.

Example 2. The facts are the same as in *Example 1*, except that R Co. also sells its name and goodwill to S Co. and ceases to operate a restaurant business. S Co. operates its restaurant using the old R Co. name. In this situation, S Co. has acquired R Co.’s business.

(2) *Separate unit.* (i) A separate unit is a segment of a trade or business capable of operating as a self-sustaining enterprise with minor adjustments. The allocation of a portion of the goodwill of a trade or business to one of its segments is a strong indication that that segment is a separate unit.

(ii) The following examples are illustrations of the acquisition of a separate unit of a trade or business:

Example 1. The M Corp., which has been engaged in the sale and repair of boats, leases the repair shop building and all the property used in its boat repair operations to the N Co. for four years and gives the N Co. a covenant not to compete in the boat repair business for the period of the lease. The N Co. is considered to have acquired a separate unit of M Corp.'s business for the period of the lease.

Example 2. (a) The P Co. is engaged in the operation of a chain of department stores. There are eight divisions, each division is located in a different metropolitan area of the country, and each division operates under a different name. Although certain buying and merchandising functions are centralized, each division's day-to-day operations are independent of the others. The Q Corp. acquires all of the physical and intangible assets of one of the divisions, including the division's name. Other than making those minor adjustments necessary to give the division buying and merchandising departments, the Q Corp. allows the division to continue doing business in the same manner as it had been operating prior to the acquisition. The Q Corp. has acquired a separate unit of the P Co.'s business.

(b) The facts are the same as in paragraph (a) of example 2, except that Q Corporation buys the division merely to obtain its store locations. Before the Q Corporation takes over, the division liquidates its inventory in a going-out-of-business sale. The Q Corporation has merely acquired assets in this transaction, not a separate unit of P Company's business.

Example 3. The R Company processes and distributes meat products. Both the processing division and the distributorship are self-sustaining, profitable operations. The acquisition of either the meat processing division or the distributorship would be an acquisition of a separate unit of the R Company's business.

Example 4. The S Corporation is engaged in the manufacture and sale of steel and steel products. S Corporation also owns a coal mine, which it operates for the sole purpose of supplying its coal requirements for its steel manufacturing operations. The acquisition of the coal mine would be an acquisition of a separate unit of the S company's business.

Example 5. The T Company, which is engaged in the business of operating a chain of drug stores, sells its only downtown drug store to the V Company and agrees not to open another T Company store in the downtown area for five years. Included in the purchase price is an amount that is charged for the goodwill of the store location. The V Company has acquired a separate unit of the T Company's business.

Example 6. The W Company, which is engaged in the business of operating a chain of

drug stores sells one of its stores to the X Company, but continues to operate another drug store three blocks away. The X Company opens the store doing business under its own name. The X Company has not acquired a separate unit of the W Company's business.

Example 7. (a) The Y Corporation, which is engaged in the manufacture of mattresses, sells one of its three factories to the Z Company. At the time of the sale, the factory is capable of profitably manufacturing mattresses on its own. Z Company has acquired a separate unit of the Y Corporation.

(b) The facts are the same as in (a) above, except that a profitable manufacturing operation cannot be conducted in the factory standing on its own. Z Company has not acquired a separate unit of the Y Corporation.

Example 8. The O Construction Company is owned by A, B, and C, who are unrelated individuals. It owns equipment valued at 1.5 million dollars and construction contracts valued at 6 million dollars. A, wishing to start his own company, exchanges his interest in O Company for 2 million dollars of contracts and a sufficient amount of equipment to enable him to begin business immediately. A has acquired a separate unit of the O Company's business.

(3) *Major portion.* All the facts and circumstances surrounding the transaction shall be taken into account in determining what constitutes a major portion of a trade or business (or separate unit). Factors to be considered include:

(i) The fair market value of the assets in the portion relative to the fair market value of the other assets of the trade or business (or separate unit);

(ii) The proportion of goodwill attributable to the portion of the trade or business (or separate unit);

(iii) The proportion of the number of employees of the trade or business (or separate unit) attributable to the portion in the periods immediately preceding the transaction; and

(iv) The proportion of the sales or gross receipts, net income, and budget of the trade or business (or separate unit) attributable to the portion.

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